

MINUTES
DRAFT UNTIL APPROVED BY THE COUNCIL
CITY COUNCIL CHAMBERS, CITY HALL
29592 ELLENSBURG AVE
GOLD BEACH OR 97444
WEDNESDAY, AUGUST 5, 2009
SPECIAL MEETING: 1:30 P.M.

CALLED TO ORDER BY MAYOR WERNICKE AT 1:30 P.M.

THE PLEDGE OF ALLEGIANCE:

ROLL CALL:

	<u>PRESENT</u>	<u>ABSENT</u>
Mayor James Wernicke	_____X_____	_____
Council Position #1 Sue Johnson	_____X_____	_____
Council Position #2 Larry Brennan	_____X_____	_____
Council Position #3 Peter Peterson	_____X_____	_____
Council Position #4 John Truesdell	_____X_____	_____
Council Position #5 David Alexander	_____X_____	_____

(At the request of Wernicke, Alexander –mayor pro-tem, chaired the meeting)

SPECIAL ORDERS OF BUSINESS:

AUTHORITY OF THE MAYOR

Wernicke-Today's special meeting is called to discuss the authority of the mayor, more particularly described as "the mayor overstepping his authority by requesting additional negotiations for the city administrator position, which is in conflict with the council's directions to him". In view of the fact that I am the target today, I think it would be inappropriate for me to chair this meeting, so as a consequence, I will defer to the mayor pro-tem, and allow him to conduct the meeting.

There was a brief discussion regarding the detailed information verses what was actually published on the agenda, which was "authority of the mayor".

Mayor Pro-Tem Alexander-I see my role here as moderator, therefore I do not intend to partake in any discussions. Also, if any motions are made or votes taken, I will be abstaining to be in compliance with the Gold Beach City Charter, Section 19, paragraph 3. "The councilor appointed mayor pro-tem shall retain his or her voting rights as a councilor except when exercising the powers and duties of the office of mayor."

In expectation, I expect this proceeding to be conducted with courtesy, civility and proper decorum at all times. Any

outbursts from the audience will be quickly quashed because that's not what we're here to do. We're here to conduct some serious business.

If acceptable to all of you, I would like to start with each councilor, working my way to the left, for any comments you would like to make, then to Wernicke for any comments he would like to make. (All agreed)

Truesdell- Thanked all interested persons that are in attendance. It is my intent to discuss the authority of the mayor in general terms and to keep it, not personal but looking at the position. We have a brand new city administrator that has been hired. I think this is a good opportunity (it was always my intent when we did get a city administrator, that we would all sit down and go over what our rules are). This would include the mayor's role as well. He is an ex officio president of the council at meetings so he is very much a part of this. I've gone through the GB Charter, the rules of the council, as well as Roberts Rules of Order. I've come up with what my understanding of the mayor is.

First of all, by definition, we have what is called a "weak mayor-council form of government". This is no reflection on the abilities of our mayor or any mayor. These are general definitions (A) I was able to get from League of Oregon Cities as well as other sources. They all agree that basically a weak mayor-council form of government, the mayor pretty much operates at the pleasure of the council. The mayor is in charge of meetings, the mayor runs meetings pursuant to the governing documents of which Roberts Rules of Order is one of our governing documents, by virtue that it says so in rule # 35 in our rules of the city council.

What I would like to do is just make sure that we get off on a good foot with the new administrator. My understanding is the mayor's primary job duties, and this is from the city's charter, the rules of the council, is to run meetings knowledgeably and properly, to display complete impartiality and that comes from many sections of Roberts Rules, which I put on that sheet. To fill vacant positions - I would assume that means expeditiously, although the rules don't say that, to sign all records of proceedings and all ordinances approved by the council and to act as the city's ceremonial figurehead. Now that last thing is by convention, not by one of our rules. I gleaned that information from the weak mayor council form of government. That is, from my point of view, all the mayor is

supposed to do, unless the mayor takes on additional responsibilities first authorized by the council.

The mayor does appoint positions pursuant to ratification by the council. The mayor signs ordinances pursuant to ratification by the council. So basically the mayor has many many functions pursuant to instructions and ratification by the council. I just want to make sure that that is a clear understanding, especially with a new city administrator on board. That's my opening statement. Thank you.

Peterson-My reason for calling the meeting was the continued negotiations after we have asked for no further negotiations. From the 23rd of July through August 4th, we've been negotiating the same situation, which after the July 24th period of time, the position the council took was there would be no more negotiations-it's over. Then we had the 25th, the 27th (twice) and the 30th and the 4th, we're still receiving emails regarding negotiations. We need to sit down and talk and get this over with. When we talked about this in a meeting, I volunteered, as others also volunteered, to work with you in negotiations and we were rejected-you told us No. At that time, it was like a red flag flying up-what's going on? Why do we keep negotiating. Is the mayor negotiating for me, for the city, for himself, who is he negotiating for? That's why I called the meeting so we could find out and get this thing settled and done.

Brennan-To my recollection, the meeting that we had on hiring Mrs. Barnes, I asked if John (Truesdell) and Pete (Peterson) would like to be part of the negotiating team with the mayor. They said no, they weren't interested and that they were not interested in negotiations at all. I have several thoughts I would like to read into the record (B). (Brennan began reading Exhibit B into the record)

"I would like to read this statement into the record from this meeting. First, I feel that the most important thing for the City of Gold Beach is to hire a full time City Administrator. I also feel Mrs. Barnes is that person and was the most qualified person submitting an application. I feel that she will do wonders for the city and I will do anything necessary to see that she is hired. I have no heartburn if she receives a contract. In fact I feel a contract would be equally beneficial to both Mrs. Barnes and the city.

If she is performing up to the standards of the council or certain benchmarks that the council would like to see, an appraisal will support her efforts. If she isn't performing up to expectations and it can be stated why she did not, those benchmarks could be brought to her attention and corrected.

I also see two major challenges for the City of Gold Beach in the near future. The first is an extremely important land use-zoning issue facing the council. The second is solving the staffing problems of our struggling Police Department.

My grief is with two certain council members that seem to be on some type of public vendetta that seems bent on causing divisiveness and turmoil instead of trying to benefit the City of Gold Beach.

We, meaning the Mayor, Myself and Mr. Truesdell are new to the political arena, and we do not have all the answers nor are we perfect politicians. I see that the Mayor has been trying to help the City in a positive direction and feel that any attempt to hire Mrs. Barnes as the City Administrator is the culmination of months of effort to bring a full time City Administrator on board. Whatever conversation took place between Mrs. Barnes and the Mayor was just that, a conversation. I don't see it as NEGOTIATIONS. What Mr. Truesdell has done, aided by Mr. Peterson., amount to making a big ta-do about nothing.

Did the mayor NEGOTIATE with Mrs. Barnes or did he simply try to bring information back to the council for their take on her questions, concerns or requests. We don't know because ONCE again, Mr. Truesdell and Peterson have jumped the gun, caused a whole lot of concern, innuendo, questions and attempt to publicly embarrass some one who is trying to help the city in the long run, to make themselves look good at someone else's expense.

In trying to deal with Mr. Truesdell, if the rules or procedures according to John (Truesdell) are not strictly followed instead of discussing them in a dignified manner he takes those opportunities to make extensive criticisms and vent some type of pent up fury via email or public council meetings which seem to delight him.

Peterson called a "point of order". **Alexander**-asked Peterson to state his "point". We are here to discuss the authority of

the mayor. What you are talking about has nothing to do with what we are here to talk about.

Brennan-This is a point of enlightenment-the information is germane to the topic of discussion. **Brennan continued reading into the record.** "In trying to deal with Mr. Truesdell, if the rules or procedures according to John (Truesdell) are not strictly followed"

Alexander-I need to make a ruling on the "point of order". I believe that subject to further (couldn't hear)if it goes personal, then I will sustain. At this point I am denying the point of order. You may continue.

Brennan-"He also uses those opportunities to criticize the integrity and ethics of those that he sees as offenders. His behavior sucks the energy out of anything productive that the council tries to accomplish.

When I ran for this position, I honestly wanted to help move the city forward.

Peterson-I am calling a "point of order".

Alexander-I am, at this point, going to sustain a point of order because it is moving away from the subject of this meeting, which is "the authority of the mayor".

Brennan-OK, may I submit this for the record? (YES)

Johnson-First thing I want to say Mr. Mayor, is I think you have done an awful lot of things for the city, and I do, with a lot of other people, appreciate it. I didn't realize we were here to talk just about further negotiations. That's why I asked a question about it. Is it just that or other things?

Alexander-What this meeting is listed as on the agenda is "the authority of the mayor". There is nothing to prevent any of the council from bringing these other issues up at another meeting. We're bound by what is on the agenda.

Johnson-Which is "authority of the mayor" so I figure I can go all the way from A-Z on his authority, right? (YES-on his authority)

As far as the further negotiations-I don't know what happened. I know we made our offer, I know that when we left the other

day, every thing was fine and dandy and you called and we got the good news that she would accept, which was a great relief because I think she is going to do wonderful things for us. I was surprised when I got the request another meeting because she had now asked for a contract and this was after the fact of everything. I don't see why we need to.....and when I asked you about it-you said all you have to do is have a short meeting and vote no. I don't have to have a short meeting and vote no. I don't have to have a short meeting to vote no, I don't feel, because it should never have been talked about "oh, we'll have a meeting and see if we can get that too". You don't have a meeting every time you're going to tell someone "no". You have the meeting to decide if you're going to say "yes". The deal was made, in my eyes. I thought the deal had been made, she was happy, we were happy, couldn't wait for her to get here and then I get this email from you saying she wants a contract and then telling me all the reasons why we should give her one. That's after the fact, it's done isn't it? I don't know what day she is going to start work, I understood it to be by September 1st. If she had asked for a \$100,000 life insurance policy, would we have to have a meeting to say "no" after we had already put out all of the benefits that are going to be offered? That's enough on that, you know my point.

My other point that I would bring up that's been bothering me every since I found out. Our noise ordinance, we all agreed it needed to be re-written. We need to have input into it and we need to re-write it and whatever else we have to do. Then I found out, you told me, "oh I've already re-written it and sent it to the attorney for her input as to legality. Well, I just about fell out of your chair. It's not up to you to be writing ordinances. It is up to us. And then especially to go ahead and send it to the attorney, which cost us I don't know how much money for the work she did, and still sent back an ordinance that I have no idea what it means. It is absolutely nothing like I would have written if I would have had a chance to have input, which I think is my right as a councilor.

Those are the two things, actually, the thing about having the meeting for further negotiations wasn't any big deal. Writing the ordinance is a big deal to me. And I will tell you another thing that is a big deal to me was the way you picked and chose, I don't mind that you did it and I was one of them but you picked and chose with this thing with Jeff Denney about which people wrongs you were going to reveal. It was

mine, Larry and David. We all apologized. We did wrong, we know that. But you didn't tell all the mistakes, you didn't tell what your mistakes were. That gets me-if you're going to throw somebody to the wolves, then throw everybody, or leave it alone and let it die off.

That's all except once again I want to thank you because I know you have done lots of good things for us.

Wernicke-First of all, I have to say the change in the agenda is a bit of a surprise. From a simple contrived albeit concern about continuing negotiations with the city administrator to an overall picture of the authority of the mayor-I frankly have a little argument with the matters that Councilor Truesdell brought up.

It is a weak mayor's position. I would be glad to go back to that. We have been without a city administrator and been under the gun now for four or five months and I've tried to do things to cover for that absence, normally by working through Shirley (Walker). That's exactly what happened in the case of the noise ordinance. I made some suggestions, Shirley and I talked about it and we sent it to legal. I conferred with Shirley which I do on almost everything because she is the acting city administrator in the absence of a city administrator.

Let me go back in time. I conveyed the offer to Ellen (Barnes) by phone. She accepted, there was no mention of any contract by either one of us. A couple of days later she came to town looking for a place to live. She stopped by the office. We met briefly, I also met her husband. We talked briefly and she indicated she would be interested in a contract. She did not say "no contract-no employ". She did not make it a condition of her employ and I did not consider it a condition of her employ. I indicated that I could not make that decision. I'm not empowered to make that decision. I was not authorized to make that decision. I did say that some of the council did not like contracts of employ period. They just do not like them. I told her I would report her interest in a contract to the council, which I did. At no time did I represent that this was new condition of employ or additional negotiations.

As some of you I think are aware, any discussion of terms of employ requires, under the state public meeting law, an executive session. So if we're going to talk about the idea

of a contract for anyone at any time, it is under the guise of an executive session. To clarify some things, I even wrote that indicating that obviously it is the councils' decision whether they want a contract or not. If it is the decision of the majority of the council to tell Ms. Barnes "no contract", so be it. I already told her it would be a hard sell at this time because at least a couple of councilors do not believe in contracts even if they have already agreed to the terms.

I said I would present it to the council, which I have. The council decision requires a meeting to discuss the matter out of the simple responsibilities inherent in being a public official.

So I informed the council that she was interested in a contract and I requested an executive session. Let me repeat that-I informed the council that she was interested in a contract and I requested an executive session.

In response in what is about the 10th or 11th time since I became mayor, Councilor Truesdell sent out to all councilors his usual (couldn't hear) factually incorrect accusatory and snide email where he once again rants about quote unquote "continuing negotiations". No effort to clarify, no questions, just another off the wall rant.

Alexander-I would ask you to amend your descriptive please. They are sort of bordering on (couldn't hear)

Wernicke-I don't know how I could amend it and be more accurate at all. It was a rant.

Alexander-Nevertheless, off the wall, I would like to request that you (couldn't hear)

Wernicke-OK. Factually inaccurate rant. In turn, he and Councilman Peterson collaborate to call this meeting. Personally, I believe a contract makes sense. It protects the employee and it protects the city. 85%-90% of the communities in this state have contracts with their city manager. I would suspect that throughout communities in this country. Any company having a budget of some 14 million dollars a year is going to have a contract with the CEO operating that company. But it is not my call. And in accordance with my responsibilities, I turned it over to the council.

By requesting additional negotiations for the CA position - I want to respond to that directly. First, I find it quite bizarre that anyone would promote disciplining anyone for requesting anything. It is a request.

Second, by flying off the handle again, someone gets falsely accused again. The facts get lost in the arrogance. The contract was never represented to be additional negotiations for the CA position. Not by Ms. Barnes to me and not by me to the council. When Ms. Barnes accepted our offer, she became the city's "at will" employee. And the city became her "at will" employer. That was done.

Third. When I ran for mayor, I indicated I wanted to change the atmosphere in city hall. Eliminate the back-biting between public officials and make the city's business as transparent as the law permits. But here we are, engaged in another unnecessary personal attack that merely stalls any progress for city business.

I asked that this meeting be public. I believe our constituents deserve the opportunity to see their council and mayor discuss issues that do nothing for the benefit of this community. I believe the public deserves to know all the circumstances surrounding this matter and that this is no more than another event in what has become a persistent course of unproductive conduct on the part of at least one councilor.

If anyone wants verification of the event, Ms. Barnes is here. You have the opportunity to ask her questions. An opportunity that one might think would have been taken advantage of long before now.

I want to also add in a response to one comment made by councilor Truesdell considering the appointment of a city administrator when he said "assume expeditiously". I made every effort to do it as fast as possible. We had a plan in effect until councilor Truesdell decided that wasn't what he wanted to do and he could only find one person that he could recommend. If everyone recalls, we asked to get 3-5 people to begin with. Councilor Truesdell's plan was simply to go through all the applications in a session, one by one, and then pick them. If we had followed his procedure, I would suggest we would still be looking for a city administrator.

With that, I am willing to answer any questions anyone has.

Truesdell-Mayor Wernicke, you mention Mrs. Barnes is here today, that is phenomenal. Who invited Mrs. Barnes?
(Wernicke said he did)

Peterson-Now we do understand and we do have a city administrator that is coming in and we know the city administrator, in our type of government, (weak mayor) the city administrator is the authority, period.

Wernicke-I understand-do you understand? And I've never made any representations otherwise.

Peterson-The only thing I am saying is I want to know if you understand that you now have a boss. None of us have tried to be your boss. We've let you more or less, act as city administrator. Granted, I've had people say to me "how come this is happening". My answer was "because no one else wanted to do the job" - none of us wanted to step forward and do what you were doing. But now that we have a city administrator, I want you to understand that you now have a boss, period.

Wernicke-Let me put it like this. I understand and I've looked forward to having a city administrator in this place for the last five months. Very much so. I was retired before I took this thing and I could go back to it quite simply. I like it but I don't have any urge to be in these cross hairs of city government continuously.

Alexander-Councilor Peterson-you used the term "you have a boss". You weren't referring to the city administrator as the mayor's boss were you?

Peterson-The city administrator runs the city.

Alexander-The city administrator is the supervisor of all department heads and departments. However, the city administrator, by definition, is not the mayor's boss or the council's boss. She is the boss of the administrative functions for this city.

Peterson-Yes, I realize that.

Alexander-The mayor, like all of us have 2,155 bosses out there. It is called the public. They are our boss too. Are there any other comments from the council?

Johnson-I don't really either except what you just said about you being in the cross hairs continuously. Did you mean that we're all coming at you or?

Wernicke-I'd say three out of five-yeah.

Johnson-Oh, well do you want me to say a bunch of other things I'd like to tell you? At some point, this council has to take their power back from you. Although, as I say, I couldn't come up with very many things you've done wrong and I don't think I am in there on your back all the time. You need to be able to take some constructive criticism, which is how I hope mine is.

Wernicke-When it is constructive criticism I am more than happy to hear it.

Johnson-Then be happy cause that's what you are hearing from me.

Wernicke-Let me tell you what. I have difficulty with your comment about taking power from the city council. I don't believe there has been a resolution, anything, that I have not asked for a vote from the city council. And in fact, while I've been scratching trying to fill the blanks in here during the absence of a city administrator, I've kept everyone on this council fully informed about everything. I do memos constantly, stuff is always in your box and we've had how many meetings.

Johnson-I know that-I'm not saying that you've done all that stuff wrong.

Wernicke-I'm just wondering how you can say I'm taking power from the council.

Johnson-I gave you the best example I can think of and that was on that ordinance. Now, why did you take it upon yourself to write up the ordinance in the way you would have it done and go on and send it to the city attorney, without any of us even knowing about it?

Wernicke-Let me put it like this. The city ordinance, as it was, caused some grief, (Johnson-yes, it was terrible) and needed some clarification. And most likely because we're in the summer months, on somewhat of an emergency basis. So the effort was to make it easier to get a permit without having to

come to the city council to get a permit for a one day jam session somewhere. So that was the primary focus of this on an emergency thing. So we didn't go through this other event. (Johnson said she understood that) So I made some suggestions, I talked it over with Shirley, we decided that to do it right, it should go up to legal.

Johnson-It should come to us first. We are the policy makers here. Why would we send it to legal and run up a big bill before we even discuss what we wanted in it?

Wernicke-Maybe I did make a mistake.

Johnson-That is the only one I mentioned, so please, don't tell me that you are in my cross hairs.

Wernicke-But I would tell you that before it goes into effect, everybody gets a taste of that provision-you would see it and see that it is legally sufficient and it's ready to go-you could turn it down or....

Johnson-It's not ready to go-in my opinion, but my opinion wasn't asked. See I think that's what gets me worse than anything. That's when I say you are out stepping your boundaries, you probably had a good reason for it, but it's not the way to do it.

Wernicke-Let me ask you another way. If the city administrator had done that, what would your position be? The city administrator has the authority to ask legal for legal advice and prepare documents for the council?

Johnson-I know that the council is the policy makers of this city, not the city administrator. So I would say if it is setting a policy, the council should do it with the input of the mayor-you've had good experience I'm sure, and the city administrator. You know, we do it all together, not just have one guy write it out and say "here-send this up and see if it's OK".

Wernicke-No one has done that. What I am asking you specifically with this noise ordinance, if the city administrator had sent that on to legal to prepare an ordinance that would remove it from the difficulties that we just experienced, would your reaction be that they can't do that that it has to come to the council first?

Johnson-I would think the council would have input first, yes. It is policy-we're making policy.

Alexander-The rules on Ordinance 572 states under "legislative policy making prohibited" - the city administrator shall not exercise any legislative making policy or legislative functions, nor attempt to commit or bind the mayor or city council any action, plan or program, regarding legislative policy or legislative functions and shall remain exclusively the province of the city. So according to Ordinance 572, as I interpret it, the city administrator would not have the authority to create legislation. The city administrator's function is to implement policy and legislation that the council generates.

Wernicke-That might be right even though it is an amendment of an existing nuisance ordinance.

Johnson-Anyway, that was my complaint and I just didn't want you to say I had you in my cross hairs because I don't. I think you are doing a wonderful service to the city.

Wernicke-Some times you come across different.

Johnson-Some times I feel different-like that and that thing about the letter we signed, which was wrong. I didn't think you were up front about that. You put all the blame on us and did not take any blame that was due to your misrepresentation, period. I have the letter from the attorney that says you were wrong.

Truesdell-In looking forward, what I would like to walk away with from today's meeting, whether it was an executive or public, that makes no difference to me - was simply an acknowledgement of the mayor's duties, the mayor's responsibilities, under our governing documents. Then again, in looking forward, Mayor Wernicke, I am not a perfect politician, I am far from it. I appreciate what councilor Brennan brought up. This is brand new to me. I'm trying hard. We all have trigger points, we all have salt under certain wounds. Mine are, what I consider, and this is not horrible, but it is a sticking point with me, an abuse by a mayor of not being totally impartial and actually going overboard in explaining issues, when really his job in meetings is very clear, only as a parliamentarian and that is a sticking point with me. Obviously none of us are perfect, it will always happen to some degree but I think if that could

be throttled back. I was elected to be a legislator, not to have myself sold by one person. If we could just get back to acknowledging - you have done a phenomenal job in absence of any city administrator. You did a job in absence of a strong city administrator. You deserve credit for that. All I'm saying is that in looking forward and looking at the future, let's get back to we'll do what the governing documents state is our job, our responsibility and it would be greatly appreciated if the mayor could do the same.

Wernicke-First of all I've done what I could do under very difficult circumstances. I have made mistakes, I'm not going to say no one does but I've tried very hard to keep the city afloat, to keep it moving forward with the absence of a city administrator. I will say that I haven't had a lot of support from anyone sitting on the council. I don't see anyone coming in to take a task or do anything, I'm ending up doing it myself. No one stepped up and said "ok, we don't have a city administrator, I'll take that shovel or I'll take that oar". No, didn't happen. So I've been running around pretty much trying to put my fingers in the dikes on a whole lot of different things for a period time. Mistakes are made. If I've made them I'm sorry. I certainly think this is a good lesson for anyone that might want to help-per chance they should think long and hard about it.

Johnson-Same way as being on a council-you have to think long and hard about it. (Wernicke-yes, I agree)

Alexander-So everyone knows what the Charter says: Section 17 covers the mayor's functions at council meetings. "The mayor is the ex-officio present of the council and presides over its deliberations when in session. The mayor is not entitled to a vote, except in case of any tie vote of the council. The mayor shall preserve order, enforce the rules of the council, and determine the order of business under the rules of the council."

Section 18 covers the mayor's powers and duties. "The mayor shall appoint the council committees with the majority approval of a quorum of the council and provided by the rules of the council, sign all records of proceedings approved by the council; shall have no veto power; sign all ordinances passed by the council within three days after their passage; and, after the council approves a bond of a city officer or a bond for a license, contract or proposal, shall endorse the bond.

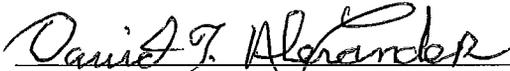
These are descriptions from the Charter. I felt it was important to put this in the record.

Johnson-I just want to thank the mayor again for the good you have done for us.

Peterson-I'll back that up and I have stated on the record, and I'll do it again that the mayor did jobs none of us wanted to do.

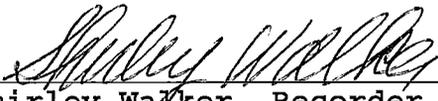
ADJOURNED AT 2:14 p.m. :

Passed by the Gold Beach City Council on September 14, 2009.



David Alexander, Mayor Pro-Tem

ATTEST:



Shirley Walker, Recorder

The location of the hearing/meeting is accessible to the disabled. Advance notice is requested if special accommodations are needed. Call (541) 247-7029 so that appropriate assistance can be provided. The City of Gold Beach is an affirmative action EEOE and complies with section 504 of the rehab act of 1973. Complaints of Discrimination should be sent to: USDA, Director, Office of Civil Rights, Washington, D.C. 20250-9419